# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## CIVIL REVISION APPLICATION No. 243 of 1994

**For Approval and Signature:**

**THE *HON'BLE* MISS JUSTICE R.M.DOSHIT**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ? |
| 5 | Whether it is to be circulated to civil judge? |

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**HARISH P BHATT &3 - Petitioner(s)**

**Versus**

**MOTIBHAI MANSUKHBHAI - Respondent(s)**

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**Appearance :**
MR SURESH M SHAH for MEHUL S SHAH for Petitioners
MR SANDEEP N BHATT for Respondent No(s).: 1.

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**CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT**

**Date : 27/06/2005**

**ORAL JUDGMENT**

Feeling aggrieved by the judgment and order dated 30th August, 1993 passed by the learned District Judge, Rajkot in Regular Civil Appeal No. 34 of 1988, the appellants-plaintiffs in Regular Civil Suit No. 845 of 1979, have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel &Lodging House Rates Control Act, 1947

{hereinafter referred to as, "**the Rent Act**"}.

The petitioners-plaintiffs are the owner of the suit shop situated at Rajkot. The suit shop was leased to the predecessor of the defendants for a monthly rent of Rs.40/= and Rs. 3/= per month towards the taxes. The plaintiffs instituted Reg. Civil Suit No. 845 of 1979 in the Court of Small Causes, Rajkot for recovery of possession of the suit shop on the grounds that the defendants were in arrears of rent since 5th November, 1975; that in answer to the demand notice, the defendants did not pay the amount of rent due; that the suit shop was given on rent for grass depot, and the defendants had changed the user of the suit shop from grass depot to that of sugarcane juice and cold drinks. The plaintiffs required the suit shop reasonably and *bona fide. A*s the plaintiff no.1 was suffering from Asthma, he was advised to avoid daily commutation to his shop at some distance. He, therefore, required to establish his business in the suit shop which was near to his residence; and that the defendants caused nuisance, annoyance and damage to the suit shop. The suit was contested by the defendants vide written statement Exh.11. The learned trial Judge, by judgment and order dated 22nd February, 1988 dismissed the suit. Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No. 34 of 1988 in the Court of learned District Judge, Rajkot. The learned District Judge, by the *impugned* judgment and order, dismissed the Appeal. Therefore, the present Revision Application.

Mr. Shah has submitted that both the Courts below have erred in recording finding against the plaintiffs. He has submitted that the suit shop was leased specifically for the purpose of grass depot. Change of business from grass depot to that of sugarcane juice and cold drinks does amount to change of user. The plaintiffs are, therefore, entitled to a decree for possession. He has relied upon the judgment of the

Hon'ble Supreme Court in the matter of **Dashrath Baburao Sangale &Ors. vs. Kashimath Bhaskar Data {**AIR 1993 SC 2646}. He has further submitted that admittedly the defendants were in arrears of rent since November, 1975 and the matter was governed by Section 12 (3)(b) of the Rent Act. Section 12 (3)(b) of the Rent Act confers protection upon the defendant against eviction provided he complies with the conditions mentioned therein. He has submitted that the said conditions require that the tenant pays or deposits the amount of rent due on the first date of hearing of the suit and continues to pay the rent regularly every month thereafter. In the present case, both the Courts below have recorded that the defendant did deposit the amount of rent due on the first date of hearing and that he had paid the rent on the date of the decree. The Courts below, however, have erred in not examining whether the defendant had earned protection under Section 12 (3)(b) of the Rent Act by depositing the rent every month regularly, pending the Suit and the Appeal. He has submitted that in absence of any evidence on record, the matter should be remanded to the trial Court for examining whether or not the defendants had complied with the conditions mentioned under Section 12 (3)(b) of the Rent Act.

In the matter of Dashrath Baburao Sangale [Supra], the tenant executed a rent note which mentioned that the piece of land was taken on rent by the tenant for the purpose of crushing sugarcane with the help of an ox. Later on, he changed the user from crushing sugarcane to that of cloth and readymade clothes. The High Court as well as the Supreme Court held that it did amount to change of user in breach of condition of tenancy. In the present case, however, except the bare word of the plaintiffs no evidence has been produced that the suit shop was leased specifically for the purpose of grass depot and for doing no other business. Admittedly, the suit shop was leased for business and is being used for business. The plaintiffs are, therefore, no entitled to decree for

eviction on the ground that the suit shop is not being used for the purpose for which it was let. As to the *bona fide* requirement, the plaintiffs have produced medical report as well as have examined the concerned Doctor. The concerned doctor did depose that the plaintiff no.1 was suffering from Asthma and was advised against by-cycling and long walk but he also deposed that with the aid of medicines, the condition of the patient had improved. It is also not proved by the plaintiffs that the plaintiff no. 1 was unable to attend the business on account of the ailment and that he would be able to carry on the business in the suit shop inspite of his ailment. In my view, therefore, the requirement of the suit shop by the plaintiffs cannot be said to be reasonable or *bona fide*.

As to the arrears of rent, Mr. Shah is right in urging that both the Courts below have failed to ascertain whether the defendants had earned protection under Section 12 (3)(b) of the Rent Act by depositing the rent regularly every month pending the suit and pending the Appeal. In absence of any evidence on record, the matter shall have to be remanded for examination on the said issue.

In view of the above discussion, the Revision Application is partly allowed. The judgment and order dated 30$^{th}$ August, 1993 passed by the learned District Judge, Rajkot in Regular Civil Appeal No. 34 of 1988 and the judgment and order dated 22$^{nd}$February, 1988 passed by the learned Judge, Small Causes Court, Rajkot in Regular Civil Suit No. 845 of 1979 are quashed and set-aside in so far as the plaintiffs have been denied decree for eviction on the ground of arrears of rent. The matter shall be remanded to the trial Court for decision on limited issue whether the defendants had earned protection under Section 12 (3)(b) of the Rent Act by complying with the condition of depositing the rent every month regularly and of paying cost of the suit and whether the plaintiffs were entitled to decree for eviction on the ground of non-

payment of rent. The Regular Civil Suit NO. 845 of 1979 shall stand restored for the aforesaid limited inquiry.

Rule is made absolute to the above extent. The parties shall bear their own cost.

{Miss R.M Doshit, J.}

Prakash*